

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

LESLIE COLE,

Plaintiff,

v.

Civil Action No. 5:08CV101  
(STAMP)

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

**MEMORANDUM OPINION AND ORDER**  
**ADOPTING AND AFFIRMING REPORT AND**  
**RECOMMENDATION OF MAGISTRATE JUDGE**

I. Procedural History

The plaintiff, Leslie Cole, filed a complaint in this Court for review of the decision of the Commissioner of Social Security to deny benefits. The plaintiff contemporaneously filed an application for leave to proceed in forma pauperis.<sup>1</sup> The case was referred to United States Magistrate Judge James E. Seibert for submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B). Upon review of the plaintiff's financial circumstances, which the plaintiff set forth in his application, Magistrate Judge James E. Seibert entered a report and recommendation recommending that the

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<sup>1</sup>"In forma pauperis" describes the permission granted to a poor person to proceed without liability for court fees or costs. Black's Law Dictionary 779 (7th ed. 1999).

plaintiff's application to proceed without prepayment of fees be denied.<sup>2</sup>

In his report, Magistrate Judge Seibert informed the parties that if they objected to any portion of his proposed findings of fact and recommendation for disposition, they must file written objections within ten days after being served with a copy of the report. No objections have been filed, and the plaintiff has paid the filing fee.

## II. Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because the plaintiff filed no objections, this Court reviews the report and recommendation of the magistrate judge for clear error.

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<sup>2</sup>Although the report and recommendation refers to the plaintiff in the feminine, the complaint refers to the plaintiff in the masculine. This Court will follow the usage in the complaint and refer to the plaintiff in the masculine.

### III. Discussion

Based upon the financial information contained in the plaintiff's application form, the magistrate judge found that the plaintiff's average monthly income during the twelve months preceding the filing of the complaint was \$1,865.00. The magistrate judge also found that the plaintiff has approximately \$482.00 in savings, and \$50,000.00 invested in certificates of deposit.<sup>3</sup> The magistrate judge further determined that the plaintiff owns real estate and personal property valued at approximately \$67,800.<sup>4</sup> The plaintiff's application states that he has no dependents and that his monthly expenses total approximately \$1,730.00. In the magistrate judge's opinion, the plaintiff's household income and property value enable him to afford the filing fee required to prosecute this action.

This Court has reviewed the report and recommendation for clear error and, finding none, concludes that the petitioner's request to proceed without prepayment of fees should be denied.

### IV. Conclusion

For the reasons set forth above, the report and recommendation of the magistrate judge is AFFIRMED AND ADOPTED in its entirety and

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<sup>3</sup>Of that \$50,000.00, \$20,000.00 serves as collateral for a loan.

<sup>4</sup>As assets, the plaintiff has listed on his application form a home valued at approximately \$60,000.00, and two vehicles--a 2003 Chevrolet Tracker valued at approximately \$6,200.00, and a 1996 Plymouth Breeze valued at approximately 1,600.00.

the petitioner's request for leave to proceed in forma pauperis is DENIED.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to counsel of record herein.

DATED: March 2, 2009

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE